

ORIGINAL
FILED
06 MAY -3 AM 10:32
RECEIVED BY CLERKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 WILLIAM R. TAMAYO -- #084965 (CA)
JONATHAN T. PECK -- #12303 (VA)
2 CINDY O'HARA -- #114555 (CA)
EQUAL EMPLOYMENT OPPORTUNITY
3 COMMISSION
San Francisco District Office
4 350 The Embarcadero, Suite 500
San Francisco, California 94105
5 Telephone: (415) 625-5653
Facsimile: (415) 625-5657

E-filing

6 Attorneys for Plaintiff Equal Employment Opportunity Commission
7
8

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

JSW

11
12 EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

13 Plaintiff,

14 v.

15 BALLY TOTAL FITNESS CORPORATION,

16 Respondent.
17
18

Civil Action No.

06 2974

COMPLAINT

Civil Rights - Employment
Discrimination

JURY TRIAL DEMAND

19 NATURE OF THE ACTION

20 This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the
21 Civil Rights Act of 1991 to correct unlawful employment practices on the basis of
22 national origin and religion, and to provide appropriate relief to Mr. Sukhdev Davin
23 Singh Dhaliwal who was aggrieved by Defendant's unlawful practices. Plaintiff alleges
24 that Defendant, Bally Total Fitness Corporation, unlawfully refused to hire Mr.
25 Dhaliwal because of his national origin, Indian, and/or his religion, Sikh. Plaintiff
26 further alleges that Defendant failed to maintain records as required Section 709(c) of
27 Title VII, 42 U.S.C. § 2000e-8(c).
28 //

JURISDICTION AND VENUE

1
2 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331,
3 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 706 (f)
4 (1) and (3) of Title VII of the Civil Rights Act of 1964, as amended (Title VII), 42 U.S.C.
5 §2000e-5 (f) (1) and (3), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C.
6 §1981(a).

7 2. The unlawful employment practices alleged herein were committed in the
8 State of California, thus venue is proper "in any judicial district in the State in which the
9 unlawful employment practice is alleged to have been committed." (§706(f)(3) of Title
10 VII, 42 U.S.C. §2000e-5(f)(3)). Venue is therefore proper in the United States District
11 Court for the Northern District of California.

INTRA-DISTRICT ASSIGNMENT

12
13 3. This action is appropriate for assignment to San Francisco/Oakland as the
14 administrative charges underlying this case were investigated in the San Francisco
15 District Office of Plaintiff Equal Employment Opportunity Commission, and the records
16 related to that investigation are in San Francisco.

PARTIES

17
18 4. Plaintiff, the Equal Employment Opportunity Commission
19 ("Commission"), is the agency of the United States of America charged with the
20 administration, interpretation and enforcement of Title VII, and is expressly authorized
21 to bring this action by Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. §2000e-5(f)(1) and
22 (3).

23 5. At all relevant times, Defendant Bally Total Fitness Corporation
24 ("Defendant") has continuously been, and is now, a Delaware corporation, qualified
25 and doing business in the state of California and has continuously had and does now
26 have at least 15 employees.

27 6. At all relevant times, Defendant has continuously been, and is now, an
28 employer engaged in an industry affecting commerce within the meaning of Sections

1 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

2 **STATEMENT OF CLAIMS**

3 **FIRST CLAIM FOR RELIEF**

4 **Violation of Title VII of Civil Rights Act for Discrimination Based on National Origin**
5 **and/or Religion**

6 7. More than thirty days prior to the institution of this lawsuit, Charging
7 Party Sukhdev Davin Singh Dhaliwal ("Charging Party") filed a charge with the
8 Commission alleging violations of Title VII by Defendant. All conditions precedent to
9 the institution of this lawsuit have been fulfilled.

10 8. Since at least on or about June 11, 2004, Defendant has engaged in
11 unlawful employment practices of discrimination based on national origin and/or
12 religion in violation of Section 703 (a) (1) of Title VII, 42 U.S.C. § 2000e-2(a)(1), by
13 refusing to hire Charging Party because of his national origin and/or his religion.

14 9. The effect of the practices complained of above in paragraph 7 has been to
15 deprive Charging Party of equal employment opportunities and otherwise adversely
16 affect his employment status because of his national origin and/or religion.

17 10. The unlawful employment practices complained of above in paragraph 7
18 were and are intentional.

19 11. The unlawful employment practices complained of above in paragraph 7
20 were done with malice and/or reckless indifference to the federally protected rights of
21 Charging Party.

22 **SECOND CLAIM FOR RELIEF**

23 **Violation of Title VII of Civil Rights Act for Failure to Make and Preserve Records**

24 12. Plaintiff Commission hereby incorporates the allegations of paragraphs 1
25 through 7 above as though fully set forth herein.

26 13. Since at least on or about June 11, 2004, Defendant has failed, in violation
27 of Section 709(c) of Title VII, 42 U.S.C. § 2000e-8(c), to make and preserve records
28 relevant to the determination of whether unlawful employment practices have been or

1 are being committed.

2 **PRAYER FOR RELIEF**

3 Wherefore, the Commission respectfully requests that this Court:

4 A. Grant a permanent injunction enjoining Defendant, its officers, successors,
5 assigns, and all persons in active concert or participation with it, from engaging in
6 discrimination based on national origin and/or religion against its employees.

7 B. Order Defendant to institute and carry out policies, practices, and
8 programs which provide equal employment opportunities for persons of Indian
9 national origin and persons of Sikh religion, and which eradicate the effects of its
10 unlawful employment practices.

11 C. Order Defendant to make whole Charging Party by providing appropriate
12 back pay, lost wages and benefits with prejudgment interest, and other affirmative relief
13 necessary to eradicate the effects of its unlawful employment practices.

14 D. Order Defendant to make whole Charging Party by providing
15 compensation for past and future pecuniary losses resulting from the unlawful
16 employment practices complained of above, including but not limited to medical
17 expenses or other out of pocket expenses in amounts to be determined at trial.

18 E. Order Defendant to make whole Charging Party by providing
19 compensation for past and future non-pecuniary losses resulting from the unlawful
20 practices complained of above, including but not limited to pain and suffering,
21 emotional distress, indignity, loss of enjoyment of life, loss of self-esteem and
22 humiliation, in amounts to be determined at trial.

23 F. Order Defendant to pay Charging Party punitive damages for its malicious
24 and reckless conduct complained of above, in amounts to be determined at trial.

25 G. Order Defendant to make and preserve all records, in accordance with the
26 provisions of Section 709(c) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-
27 8(c), relevant to the determination of whether unlawful employment practices have been
28 or are being committed.

1 H. Grant such further relief as the Court deems necessary and proper in the
2 public interest.

3 I. Award the Commission its costs of this action.


4 **JURY TRIAL DEMAND**

5 Pursuant to the provisions of Federal Rule of Civil Procedure 38(b), Plaintiff
6 hereby demands a jury trial.

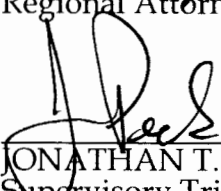
7
8 JAMES L. LEE
Deputy General Counsel
9 GWENDOLYN YOUNG REAMS
Associate General Counsel

10 EQUAL EMPLOYMENT OPPORTUNITY
11 COMMISSION
Office of the General Counsel
12 Washington, DC 20507


13 Dated: 5/2/2006

14 
WILLIAM R. TAMAYO
Regional Attorney

15
16 Dated: 5/2/2006

17 
JONATHAN T. PECK
Supervisory Trial Attorney

18
19 Dated: 5/11/2006

20 
CINDY O'HARA
Senior Trial Attorney

21 EQUAL EMPLOYMENT OPPORTUNITY
22 COMMISSION
23 San Francisco District Office
350 The Embarcadero, Suite 500
24 San Francisco, CA 94105
25
26
27
28